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INFO RUEHBS/USEU BRUSSELS  
RUEHMT/AMCONSUL MONTREAL 5634  
RUEHBJ/AMEMBASSY BEIJING 8178  
RUEHBR/AMEMBASSY BRASILIA 2669  
RUEHBU/AMEMBASSY BUENOS AIRES 0448  
RUEHBY/AMEMBASSY CANBERRA 6267  
RUEHMO/AMEMBASSY MOSCOW 5528  
RUEHNE/AMEMBASSY NEW DELHI 8183  
RUEHUL/AMEMBASSY SEOUL 1578  
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UNCLAS SECTION 01 OF 02 STATE 004858

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SUBJECT: FOLLOWING UP ON THE EU'S DRAFT PROPOSAL ON  
AVIATION EMISSIONS

REF: (A)06 STATE 190254, (B)06 STATE 188369

11. This is an action request. See paragraphs 6-7.
12. In November, Reftel A asked posts to reach out to appropriate EU member state representatives to seek their views on a European Commission proposal to include international aviation in the EU Emissions Trading Scheme (ETS), which at the time had not been published. Many states noted at the time that they had not formed an official position because they were awaiting a final draft (Finland, Germany, Lithuania, Poland, Portugal). Others (Hungary, Latvia, Lithuania, Spain) acknowledged that many serious questions remained unresolved and needed to be addressed (legal implications, competitive distortions), noting also that a number of other countries had already registered concerns. A few (Denmark, the Netherlands, the UK, Finland) strongly supported the EU initiative.
13. On December 20, the European Commission issued its draft proposal for a directive to include international aviation in the EU's Emissions Trading Scheme (ETS). According to the draft, effective January 1, 2011, all flights operating BETWEEN EU airports will be covered by the scheme. One year later, beginning on January 1, 2012, all flights arriving at and departing from any airport in the Community from or to any point within and outside the Community will be included. The Commission's proposal gives passing mention to ongoing work in the International Civil Aviation Organization (ICAO), and notes that final ICAO guidance on emissions trading "will be taken into account, as appropriate" during the EU's co-decision procedure.
14. The United States and a large number of other countries (including Australia, Brazil, Canada, China, India, Japan, Korea, New Zealand, and Russia) strongly objected to the extraterritorial application of the EU ETS to international aviation. Although the one year delay in implementation of the ETS for flights to and from airports outside the EU in the ETS, and language taking note of work in ICAO have been portrayed as concessions (to the U.S.), their effect on the overall proposal is minimal. As noted in reftel A, inclusion of non-EU carriers without the consent of their governments is inconsistent with EU Member State international legal obligations under the Chicago Convention on International Civil Aviation and may violate

numerous bilateral air services agreements, including those with the U.S. The EU's proposal will undermine, not support efforts to develop effective measures in ICAO, and ultimately delay implementation of a global solution to aviation aircraft emissions.

¶15. The proposal has been forwarded to the European Council and the European Parliament for review. The legislative process could take up to two years, but the next six to twelve months will be critical as ICAO contracting states prepare for the ICAO Assembly in September, and the debate in Europe heats up. ICAO's Committee on Aviation Environmental Protection (CAEP) is finalizing guidance to be approved at the Assembly that supports the consensus position in ICAO that participation in an emissions trading scheme must be accomplished on the basis of mutual consent between states. If Europe moves forward on the basis of the current Commission proposal, it will be completely isolated from the rest of the world. The end result could be a huge setback for international progress on aviation environmental protection.

¶16. ACTION REQUEST. Posts are asked to follow up with appropriate host government officials, including Members of Parliament, to gauge their reactions to the Commission's proposal, and to register once again our disappointment and concern with the Commission's unilateral action on this issue. Posts should note that:

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- The Commission proposal circumvents the appropriate multilateral process in ICAO, ignores the strong objections raised by the U.S. and many other countries, and risks violating EU member state international legal obligations.
- This action complicates our reengagement efforts with the EU on climate change and clean energy.
- The one year delay in implementation has minimal impact and does not alleviate concerns, or weaken U.S. resolve to proceed as appropriate with formal dispute resolution, either in ICAO or pursuant to our bilateral air services agreements with EU Member States.
- Moreover, any EU aviation emissions trading scheme that does not seek the consent of non-EU participants will become a model of conflict and failure - not effective environmental mitigation.

¶17. Posts should also point out that consensus among EU member states is uncertain - several have raised concerns regarding the legal and competitive implications of the Commission's proposal. For Southern European posts, Departments recommends that you target tourism and travel ministries as well as transport and environment representatives. For Eastern European posts, we recommend that you target trade and economic ministries in addition to the above.

¶18. A set of Questions and Answers on the EU proposal and the U.S. position is being finalized for posts' use as appropriate, and will be circulated broadly. For additional information on the EU proposal, posts may access the EU's website at:

[http://ec.europa.eu/environment/climat/aviati on\\_en.htm](http://ec.europa.eu/environment/climat/aviati on_en.htm)

For additional information on interventions in Brussels and follow-up with "friendly" countries, posts may contact Kathleen Morenski at the US Mission - MorenskiKA@state.gov.

For additional information on U.S. work in ICAO and the U.S. position on aviation greenhouse gas emissions, posts may contact Drew Nelson in the Office of Global Change (nelsonds@state.gov) and/or Megan Walklet-Tighe in the Office of Transportation

RICE Policy (walkletm@state.gov).